

IN THE DISTRICT COURT OF THE UNITED STATES
DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

UNITED STATES OF AMERICA,) 2:11-CR-511
)
Plaintiff) Charleston,
) South Carolina
VS) November 5, 2014
)
JIAN-YUN DONG, et al,)
)
Defendants)

TRANSCRIPT OF TESTIMONY OF
DR. JAN WORARATANADHARM
BEFORE THE HONORABLE C. WESTON HOUCK,
SENIOR UNITED STATES DISTRICT JUDGE

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Proceedings recorded by mechanical shorthand,
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MR. KLUMB: The Government calls Jan
Woraratanadharm.

THE CLERK: Place your left hand on the Bible,
please, and raise your right hand.

THE COURT: Let's swear them in front of the jury.
(Thereupon, the jury returned to the courtroom.)

THE COURT: All right. Go ahead and swear the
witness.

THE CLERK: Please say your name for the record and
spell it, please.

THE WITNESS: Jan Woraratanadharm.

THEREUPON:

MS. JAN WORARATANADHARM,
Called in these proceedings and after having been first duly
sworn testifies as follows:

DIRECT EXAMINATION

BY MR. KLUMB:

Q. Good afternoon, Dr. Woraratanadharm. Could you tell us,
please, what you do for a living now?

A. I work at Medicago Biotech Company in Raleigh, North
Carolina.

Q. And what do you do there?

A. I'm a process development engineer. I do research in the
laboratory.

1 Q. Let's go through your work history a little bit, starting
2 with your educational background. What degrees do you have
3 and from where?

4 A. I went to undergrad at the University of Virginia. I got
5 a bachelor's degree in biology, and then I went to graduate
6 school at the Medical University of South Carolina where I
7 got a Ph.D. in microbiology and immunology.

8 Q. And when was it that you graduated from MUSC with your
9 Ph.D.?

10 A. In May of 2005.

11 Q. And do you know the defendant in this case, or one of the
12 defendants, Dr. John Dong?

13 A. Yes, I do.

14 Q. How long have you known him?

15 A. About 10 years.

16 Q. Where was it that you first met him?

17 A. At MUSC. I was a graduate student in his lab.

18 Q. And what was the nature of your contact with him then?

19 A. I just -- I just worked in his lab. I was a student.

20 Q. And then when you graduated from MUSC with your Ph.D.,
21 were you able to find work?

22 A. Yes.

23 Q. Where at?

24 A. At GenPhar.

25 Q. And roughly again when was that?

1 A. May of 2005.

2 Q. And what was your position with GenPhar when you started?

3 A. Manager of Operations.

4 Q. How did it come about that you got a job there? Did you
5 interview or what happened?

6 A. Um, I spoke with Dr. Dong. He was my mentor in graduate
7 school, and he's also the President and Chief Scientific
8 Officer at GenPhar.

9 Q. What does it mean to be a mentor at MUSC?

10 A. Um, basically I worked in his lab. He -- I had a
11 committee that I would report to every year, and he was -- he
12 was the main person on the committee that I would report to,
13 my research to.

14 Q. Then you started at GenPhar in May. And you, as
15 indicated, you were the Manager of Operations. What did that
16 entail?

17 A. Um, initially when I was first hired, I was just
18 compiling some of the data that was developed at GenPhar and
19 putting it together in publications. And then after that, I
20 did a lot of work writing grant proposals and some work with
21 regulatory documentation.

22 Q. Tell us a little bit about what GenPhar was like, say, in
23 2005 when you started there.

24 First of all, approximately how many people worked
25 there?

1 A. I would say about 10 or 12.

2 Q. And did you have an office?

3 A. I did. Initially it was just me, and then later I was
4 sharing an office with a few other people.

5 Q. Okay. Was there a laboratory there, as well?

6 A. Yes, there is a lab at GenPhar.

7 Q. How about other offices, very many?

8 A. Yes.

9 Q. Like how many?

10 A. Um, maybe three or four.

11 Q. And did you work at one location throughout your tenure
12 there or did GenPhar move at some point in time?

13 A. It moved.

14 Q. Approximately when?

15 A. I don't remember exactly. Maybe 2006 or 2007.

16 Q. Okay. Both locations were in what city?

17 A. In Mount Pleasant.

18 Q. Was the second facility larger or smaller?

19 A. Um, I think it was a little bit larger.

20 Q. Now, you indicated that after an initial period in which
21 you were compiling data that you began doing grant
22 applications and regulatory responses. Did you do that
23 throughout your tenure at GenPhar?

24 A. Yes.

25 Q. When was it that you left?

1 A. In December of 2009.

2 Q. And why did you leave?

3 A. I found other employment in North Carolina.

4 Q. Now, from 2005 to 2009, could you estimate -- well, first
5 of all, did your workload change much in terms of how much
6 time you spent on doing grants and other things?

7 A. Not really.

8 Q. Pretty much the same throughout?

9 A. Yes.

10 Q. And what would you estimate would be the percentage of
11 time that you spent on drafting new grant applications?

12 A. Probably about 80 percent of my time.

13 Q. How many would you say you worked on in a year?

14 A. I think on average it was about 10 a year.

15 Q. Now, how did you know to apply for a grant? How does
16 somebody in your position figure out where to put in an
17 application?

18 A. Um, a lot of our applications were to the National
19 Institutes of Health, NIH, and so I was on different e-mail
20 lists so that I would receive announcements of upcoming grant
21 opportunities. There are also -- you can also look on their
22 website and there is a fed business op, which is another
23 website, which has federally funded opportunities there.

24 Q. During this period of time, what type of projects was
25 GenPhar working on back in, say 2005?

1 A. Vaccines projects.

2 Q. And what types of vaccines?

3 A. Um, we had --

4 Q. Can you list them for us? Can you list them for us?

5 A. Oh, yeah. We had vaccines. We were applying for grants
6 for vaccines for E-Bola, for Marburg, Dengue, influenza, Rift
7 Valley fever, Chikungunya. Those are the ones I can think of
8 offhand.

9 Q. Avian flu?

10 A. Yes.

11 Q. Was that one of the ones you mentioned or is that
12 something different?

13 A. I said influenza, but yeah, that encompasses both
14 seasonal and Avian flu.

15 Q. How about HIV? Any work in that area?

16 A. A little bit, but that was not -- not as much of a focus
17 for the vaccines. There was another product that GenPhar was
18 developing that was an HIV detection. That was one of the
19 projects at the beginning of the company existence.

20 Q. When you arrived, were they still working on that or had
21 that kind of dwindled?

22 A. It was dwindling when I started.

23 Q. Besides the vaccine and the one HIV assay test that you
24 described, were there other types of projects that were being
25 worked on, say, during your entire tenure?

1 A. That was the main thing was the vaccines.

2 Q. And were you applying for grants for pretty much all of
3 those vaccines?

4 A. Yes.

5 Q. How was it that you decided which ones to apply for and
6 which ones not?

7 A. If there was -- if there is an opportunity that sounded
8 like it was something that we could apply for, I would let
9 Dr. Dong know and he would make a decision on it, whether or
10 not to apply.

11 Q. Okay. Would you apply unilaterally without bouncing it
12 off him first?

13 A. No.

14 Q. Okay. And then where did you get the information that
15 went into a grant application?

16 A. Um, we had several grant applications that had been
17 submitted in the past, so we would use -- we used some of
18 that information. And then, you know, some of it, if it was
19 a new vaccine for us, do literature searches and write things
20 about it from there.

21 Q. And who, if anyone at GenPhar, would you get input from
22 in drafting a grant application?

23 A. Dr. Dong.

24 Q. Anyone else?

25 A. It was mainly him.

1 Q. Okay. Would you describe sort of the managerial
2 infrastructure of GenPhar when you worked there in 2005?

3 A. Um --

4 Q. Who was in charge of what?

5 A. Dr. Dong was definitely the one in charge of pretty much
6 the direction of the company. Dr. Danher Wang, she kind of
7 did some of the more supervision of the laboratory
8 activities.

9 Q. And is she related to Dr. Dong, do you know?

10 A. Um, they were married.

11 Q. Okay. Did you ever submit a grant application that
12 hadn't been reviewed by Dr. Dong?

13 A. No.

14 Q. Can you describe the amount of the input that he would
15 have into your draft applications in terms of how much he
16 changed them? A lot, a little?

17 A. Um, he was heavily involved throughout the whole entire
18 process. He was involved in, you know, deciding on what --
19 what things that we would include in the grant, and then
20 reviewing what was written and approving what was submitted.

21 Q. In submitting these grant applications, did you ever feel
22 that the information in them was inaccurate?

23 A. Um, sometimes.

24 Q. Can you give us an example?

25 A. Um, well, there was one proposal for an Anthrax vaccine.

1 MS. PARHAM: Objection, Your Honor. Anthrax is not
2 subject to this Indictment.

3 THE COURT: What relevance does it have?

4 MR. KLUMB: I think it's classic --

5 THE COURT: Say what?

6 MR. KLUMB: I believe it's classic 404(b), Your
7 Honor. I think it's also encompassed within the general
8 description of the conspiracy in Count 1.

9 THE COURT: Ms. Parham?

10 MS. PARHAM: I filed a written 404(b) notice in
11 this case and have received no such 404(b) notice.

12 MR. KLUMB: Counsel is correct.

13 THE COURT: Say what?

14 MR. KLUMB: She's correct.

15 THE COURT: Okay. I would have to hear you off the
16 record. I really don't know enough about what she's going
17 into, but it seems to me that if it involves a grant or an
18 application for a grant that's not involved in this
19 litigation, then it certainly looks like it might be
20 irrelevant. You say it comes in under 404(b); they say they
21 asked you to reveal that and you didn't tell them.

22 MR. KLUMB: I have to withdraw that as a basis for
23 the admissibility of the evidence. Counsel is correct. I
24 stand corrected. But I still feel that it's within the scope
25 of the conspiracy and understand why we would have to take

1 that up outside the presence of the jury.

2 THE COURT: All right.

3 MR. KLUMB: So I'll move on.

4 Q. Let me show you what's been admitted into evidence as
5 Government's Exhibit 1. First of all, do you recognize it?

6 A. Yes.

7 Q. What do you recognize it to be?

8 A. It's a grant application for Marburg vaccine.

9 Q. And does it bear any signatures that you recognize?

10 A. Yes. My signature.

11 Q. And the date?

12 A. September 11th, 2006.

13 Q. Now, you indicated that you were preparing about 10 grant
14 applications a year. How many of them were successful during
15 your time?

16 A. I think just two, this one and a small business grant for
17 Chikingunya.

18 Q. All right. Would you read, please, box 14, just the left
19 of your signature on the face page of the grant application.

20 A. "I certify that the statements herein are true, complete
21 and accurate to the best of my knowledge and accept the
22 obligation to comply with Public Health Services's terms and
23 conditions if a grant is awarded as a result of this
24 application. I am aware that any false, fictitious or
25 fraudulent statements or claims may subject me to criminal,

1 civil or administrative penalties."

2 Q. Why did you sign that and not Dr. Dong?

3 A. He asked me to sign it. Because we were a small company,
4 I think he wanted to give the impression that we weren't that
5 small. So, you know, if he signed it and he was the
6 principal investigator, then it seemed like we didn't have a
7 whole lot of staff.

8 Q. Okay. Now let's turn, if you would, to page 5. Do you
9 recognize that page?

10 A. Yes.

11 Q. Tell us at the top of the page where it says "Detailed
12 budget for initial budget period, direct costs only,
13 personnel." Where did you get the information to put into
14 that particular page?

15 A. Um, from Dr. Dong.

16 Q. When you submitted the form to the application to the
17 National Institutes of Health, did it have handwriting in
18 that column down the middle under months devoted to project?

19 A. No.

20 Q. Have you filled out similar forms like that since this
21 particular one?

22 A. Yes.

23 Q. See where you have listed 12 months under calendar months
24 for months devoted to project?

25 A. Yes.

1 Q. What can you tell us about that? Is that the way you
2 filled out subsequent forms?

3 A. No. That's -- that's an incorrect way of filling out the
4 form.

5 Q. So for example, for Mr. Holman, David Holman --

6 A. Yes.

7 Q. -- how much time was he supposed to be working on this
8 particular project as a projection?

9 A. 60 percent of his time.

10 Q. And so you put down 12 months basically in error?

11 A. Yes.

12 Q. Okay. Did you learn that this was the incorrect way to
13 fill it out and you should actually translate the percentage
14 to the number of months?

15 A. Yes.

16 Q. Okay. And for yourself, how much time was projected to
17 be worked on in this particular project if the grant was
18 given?

19 A. 60 percent.

20 Q. Now, at this point in time you indicated you were working
21 in an office. Were you sharing it with other people at this
22 point in time?

23 A. Yes.

24 Q. Who?

25 A. David Holman.

1 Q. Do you know, was he a Ph.D.?

2 A. Yes, he has a Ph.D., as well.

3 Q. Do you know if anyone else was sharing office space with
4 you at this point in time that you remember?

5 A. Um, I think at this point in time is the two of us and
6 maybe Bill Cooper.

7 Q. And how far apart were you working from Mr. Holman in
8 terms of distance?

9 A. Maybe four feet away.

10 Q. Did you have a good idea what he was doing every day?

11 A. Yes.

12 Q. What was he working on primarily?

13 A. Um, he worked also on grant proposals, grant
14 applications. He also worked in the lab.

15 Q. More than you did?

16 A. Yes.

17 Q. Okay. Now, do you see where the line that says QCQA
18 Director to be hired?

19 A. Yes.

20 Q. Now, in that particular personnel slot, how much did you
21 intend to communicate the QCQA person would be working on
22 this project?

23 A. 100 percent of their time.

24 Q. Was there a QCQA Director at GenPhar at the time you
25 filled this out?

1 A. No, there wasn't.

2 Q. Now, a couple slots down we have equipment. Would you
3 read that, please, aloud for the jury.

4 A. "Wave bioreactor 200 liters for \$140,00. FPLC for
5 \$93,900."

6 Q. And they would total how much?

7 A. \$233,900.

8 Q. What is a wave bioreactor?

9 A. A wave bioreactor is a piece of equipment that can be
10 used for manufacturing. For our purposes, it was for
11 manufacturing vaccines. Basically grow a lot of cells in it.
12 It's like a big bag with a lot of liquid, and just rocks back
13 and forth to help provide oxygen to the cells that are in
14 there.

15 Q. And at the time you filled out this application, did
16 GenPhar have a wave bioreactor? If you know.

17 A. We did. We had a smaller one.

18 Q. And could you estimate for us the volume of that smaller
19 one? Would that be tough?

20 A. It would be tough for me to estimate, but it was
21 definitely smaller than 200 liters. Maybe 10 liters.

22 Q. And where did the information come from for the cost data
23 in there, like the 140,00? Do you know where that came from?

24 A. Um, I believe that came from the vendors.

25 Q. And describe the process for us that you would go through

1 to get those figures for equipment costs that you are putting
2 into a grant.

3 A. For some items you might be able to find the price on
4 line, and other cases you would talk to the vendor directly
5 and ask for a quote.

6 Q. Okay. Now turn, please, to page 8, the section entitled
7 Consortium Contractual Agreements. So again, who would have
8 put that information together?

9 A. I probably put that together.

10 Q. And are you familiar with the type of work that these
11 different subcontractors or consortium participants were
12 going to do?

13 A. Yes.

14 Q. Okay. And Milestone 1 you have identified AppTech for
15 \$123,760. What do they do?

16 A. They do a lot of testing of the vaccine products to
17 ensure that safety.

18 Q. And milestone 2, USAMRIID. What does that stand for? If
19 you know.

20 A. I think it's the U.S. Army Medical Research Institute of
21 Infectious Diseases.

22 Q. So that figure of \$606,900, where would that have come
23 from?

24 A. That would have come from USAMRIID.

25 Q. And what is meant by non-human primate studies?

1 A. Those are monkey studies to test the efficacy of the
2 vaccines.

3 Q. Does that involve actually inoculating the monkeys with
4 the disease?

5 A. Um, first it involves inoculating them with a vaccine and
6 then challenging them with the actual virus and see if the
7 vaccine protects them against it.

8 Q. Does that have to be done in any sort of special
9 facility?

10 A. Yes. It requires a biosafety level 4 facility. There is
11 very few of those in existence.

12 Q. And what does that mean and why does it require that type
13 of facility?

14 A. Um, it just -- biosafety level 4 is the highest level of
15 bio containment that's available. It just means that you
16 know that that particular pathogen is highly infectious, and
17 so you take certain safety precautions to make sure that
18 everything is performed safely, no one gets infected.

19 Q. Okay. Now take a look, please, at Milestone 3. There is
20 three outside entities involved there. AppTech is one of
21 them. We've described them already. The next is Molecular
22 Medicine GMP Vaccine Production. What's that?

23 A. GMP stands for Good Manufacturing Practices. It's --
24 it's the level -- it's a guidance, guidelines that you have
25 to follow whenever you are manufacturing any products that

1 will be going into humans, like drugs or vaccines.

2 Q. In GenPhar's lab during the time that you worked there,
3 were they capable of doing GMP vaccine production?

4 A. No.

5 Q. That had to go outsource?

6 A. Yes. It had to be outsourced.

7 Q. All right. And then look at the third vendor under
8 Milestone 3. That's MUSC Pilot Run. What does that mean --

9 A. Um --

10 Q. -- if you remember?

11 A. I think they were -- they were doing a pilot run of the
12 toxicology studies, I believe.

13 Q. Okay. And Milestone 4 we have MUSC listed again, this
14 time more specific. Can you describe that for us?

15 A. Yes. We were proposing that they would perform
16 toxicology studies on the vaccine product in animals.

17 Q. And how do they do that? Briefly.

18 A. Um, they would inject animals with the vaccine and just
19 determine the safety of the vaccine, if they had any sort of
20 side effects or adverse reactions to the vaccine product.

21 Q. So to get a vaccine to production for humans through the
22 Food & Drug Administration, what are the two things you have
23 to establish?

24 A. Safety and efficacy.

25 Q. Does it work and does it hurt?

1 A. Right.

2 Q. Now let's turn to Milestone -- I'm sorry. We covered
3 toxicology. What does biodistribution mean?

4 A. Biodistribution just looks at where does -- where does
5 the vaccine go after you inject it? How long does it stick
6 around before it's cleared by the body?

7 Q. And for toxicology and biodistribution studies, do they
8 generally use non-human primates or monkeys or something
9 else?

10 A. Generally they use rabbits and sometimes mice, too.

11 Q. And the last vendor here is Gene Logic, where it says
12 Standby Toxicology Studies. What does that mean?

13 A. They were -- we had proposed that they would do the same
14 type of work, but they would be as a standby just in case,
15 because MUSC didn't quite have a set -- their facility set up
16 for the GOP toxicology studies yet. So Gene Logic does have
17 GOP standards already in place, and so that was our backup.

18 Q. Do you remember whether or not you had gotten a bid or a
19 proposal from MUSC for the tox and biodistribution studies?

20 A. Yeah, I think we did receive a proposal from them, or at
21 least a budget.

22 Q. Okay. Now let's turn, if you would, please, to page 30
23 of Exhibit 1. The next page. And take a look at the top,
24 please. What does this section of the grant application
25 contain?

1 A. Well, we initially had submitted a proposal to the NIH
2 and then they asked us to submit a revised -- a revised
3 proposal and timeline.

4 Q. Okay. And what was the difference between the original
5 application and this one generally?

6 A. Um, I think they asked us to make it shorter, like
7 instead of -- maybe instead of five years, it was four years,
8 or I'm not -- I just remember they needed to cut the budget a
9 little bit, so we needed to make it.

10 Q. Anyway, this was the one that was successful? It was
11 granted?

12 A. That's right.

13 Q. Okay. And this section of the grant application that
14 says Milestones and Timeline, what kind of information is in
15 this section?

16 A. It's describing the work that we propose to be doing on
17 this if we get the grant awarded.

18 Q. So the budget sheets that we saw deal with the money
19 involved and this involves the science. Fair to say?

20 A. Yes.

21 Q. Take a look, please, at page 33, Milestone 2. Now,
22 Milestone 2 consists of how many different tasks?

23 A. There are three tasks.

24 Q. What are the first two?

25 A. Task 8 was to determine the minimum number of antigens

1 needed for trivalent protective efficacy. It was for our
2 monkey studies.

3 Q. And what's task 10? Is that a monkey study, too, or
4 something different?

5 A. That's also a monkey study.

6 Q. Okay. Now, do you know if USAMRIID performed the monkey
7 studies that are proposed by this grant?

8 A. I'm not sure.

9 Q. Now take a look, please, at what's been admitted into
10 evidence as Government Exhibit 2. We'll leave Number 1 up
11 here. Do you recognize that?

12 A. Yes.

13 Q. What is it?

14 A. It's a grant progress report.

15 Q. And did you have any involvement in preparing that for
16 submission to NIH?

17 A. Yes, I did.

18 Q. Was there more than one that you worked on during the
19 time you were there?

20 A. Yes.

21 Q. Okay. Who signed this one?

22 A. I did.

23 Q. Now, is there a page on Exhibit 2 -- strike that.

24 Let's take a look, again, at the first page where
25 your signature appears to the left. We have box 13. What

1 does that say?

2 A. "I certify that the statements herein are true, complete
3 and accurate to the best of my knowledge and accept the
4 obligation to comply with Public Health Services's terms and
5 conditions if a grant is awarded as a result of this
6 application. I'm aware that any false, fictitious or
7 fraudulent statements or claims may subject me to criminal,
8 civil or administrative penalties."

9 Q. Now, is this particular grant progress report, would you
10 have prepared that yourself or with the assistance of anyone
11 else?

12 A. Um, I probably would have put together the first draft,
13 but it would require approval by Dr. Dong.

14 Q. Is there a page on this exhibit where you report the
15 actual time spent by key personnel on the first year of the
16 project?

17 A. Yes.

18 Q. Where would that be?

19 A. That's on page 9.

20 Q. Okay. If you go to that page, please. Now, is there a
21 month devoted to project figure for your work on this grant
22 that appears on page 9?

23 A. Yes.

24 Q. What is it?

25 A. It's 7.2 calendar months.

1 Q. Which is approximately what percentage of year, or not
2 approximately, what percentage?

3 A. You are making me do math. Whatever 7.2 divided by 12
4 is.

5 Q. Should I do the math on the board?

6 A. Sure.

7 Q. 60 percent times 12 would be?

8 A. 60 percent then.

9 Q. Okay. Did you work 7.2 months of the first year of the
10 NIH Marburg Grant on Marburg-related work?

11 A. Probably not.

12 Q. What do you mean "probably"?

13 A. Well, I did say that I was spending about 80 percent of
14 my time on grant applications.

15 Q. For other grants?

16 A. For other grants.

17 Q. And 20 percent of 12 months would be, what, 2.4 months,
18 right?

19 A. Um-hum.

20 Q. Did you know that this was not true at the time you
21 submitted it?

22 A. Yes.

23 Q. Why did you do that?

24 A. Um, that's what I was told to report.

25 Q. By whom?

1 A. Um, I think that we were getting -- I got these numbers
2 from Dr. Danher Wang.

3 Q. Now, the 7.2 months on the project, did that match the
4 percentage of time that was projected for you in Exhibit 1 we
5 just looked at? Do you want to go back and confirm it?

6 A. No. Yeah, it was the -- it was the same as of what was
7 projected.

8 Q. Did Dr. Wang give you specific instructions about how it
9 was you should be booking your time on this form?

10 A. Um, yeah. She told -- she told me the percentages to
11 write on -- write for each personnel.

12 Q. And in the case of David Holman, he is a Ph.D., as well,
13 right?

14 A. Yes.

15 Q. Did his number of percentage of time also match the
16 percentage of time on the initial grant application? Do you
17 remember?

18 A. Yes.

19 Q. Okay. Now, on Exhibit 1, when we looked at the
20 projection, you recall that there were many different
21 individuals that were listed?

22 A. Yes, I do.

23 Q. And this particular personnel report identifies only
24 four?

25 A. That's correct.

1 Q. Did you hear something about that from NIH?

2 A. Yes, we did.

3 MR. KLUMB: Do you have Exhibit 6?

4 Q. Let me show you what's been marked for identification as
5 Government Exhibit 6. Having previously given it to counsel.
6 Do you recognize that?

7 A. Yes.

8 Q. First of all, how many pages is the exhibit?

9 A. It's three pages.

10 Q. And what do the three pages consist of? Can you describe
11 them for us generally?

12 A. The first two pages are an e-mail discussion, and the
13 third page is the key personnel report, report form, what we
14 were just describing, but it has additional personnel listed
15 there.

16 Q. And were the e-mail messages from and to you?

17 A. Um, they were initially to Dr. Dong, and then the
18 response was from me.

19 Q. Okay. Were you copied on the initial one?

20 A. No. Oh, yes, I was. Sorry. Yes.

21 MR. KLUMB: At this time I would offer into
22 evidence Government's Exhibit 6.

23 MS. PARHAM: No objection. No objection.

24 THE COURT: What exhibit is it?

25 MR. KLUMB: 6, Your Honor.

1 THE COURT: Exhibit 6 without objection.

2 (Thereupon, Government's Exhibit Number 6 was
3 received in evidence.)

4 Q. Okay. First of all, let's turn to page 2, which is the
5 first e-mail, correct?

6 A. Yes. That's correct.

7 Q. And who is Kim Belk? Do you know?

8 A. She was a Grants Management Specialist that was working
9 on our grants.

10 Q. And this e-mail, what is it that she's bringing to your
11 attention?

12 A. Um, she was noting that there was a difference between
13 what was proposed and what we reported in the progress report
14 as far as personnel, the key personnel listed.

15 Q. So how did you respond to that?

16 A. In the e-mail I said -- it was explaining that some --
17 that Dr. Cooper was no longer working at GenPhar and that we
18 did not end up hiring a QCQA Director yet. And that those
19 efforts were then split up among other staff members within
20 GenPhar.

21 Q. Okay. And in fact, would you please read the third
22 paragraph of your e-mail to Kimberly Belk dated August 29th,
23 2007.

24 A. "Additionally, GenPhar has been seeking a QCQA Director
25 but has not yet filled that position. In order to accomplish

1 the goals listed for the QCQA Director, these
2 responsibilities were split up among several research support
3 staff within the company. The main responsibilities were
4 accomplished by Jianghua Zang, who contributed 70 percent
5 effort, or 8.4 calendar months for year one of the project.
6 Jianghui has also been generally listed as research support
7 among our usual grant documents, and similar to Mr. Moore,
8 was accidentally not listed on the key personnel report for
9 that reason. Additional efforts from five other personnel
10 within the company whose efforts were only for either one
11 month, three months or five months also went into assisting
12 Jianghua in his QCQA efforts."

13 Q. Are you familiar with whether or not anyone with GenPhar
14 was doing QCQA work on the Marburg Grant during the first
15 year of its funding?

16 A. I don't think any QCQA work was being done.

17 Q. At all?

18 A. No.

19 Q. So when you wrote this e-mail, did you believe it to be
20 false?

21 A. Yes.

22 Q. Why did you do that?

23 A. I was asked to write the letter.

24 Q. By whom?

25 A. By Dr. Dong.

1 Q. Did you copy it to him?

2 A. Yes.

3 Q. Did you copy it to anyone else besides Kimberly Belk and
4 Dr. Dong?

5 A. Um, to Patricia Repik from the NIH.

6 Q. And who is she?

7 A. I think she was the program officer for this particular
8 grant.

9 Q. Okay. Now I would like to show you what's been marked
10 for identification as Government Exhibits 11, 12, 13.

11 MR. KLUMB: And I'm now showing them to counsel.

12 MS. PARHAM: No objection.

13 Q. Take a look at those, please, and tell us whether you
14 recognize them.

15 A. Yes, I recognize them.

16 Q. What do you recognize them to be?

17 A. These are my time sheets at GenPhar.

18 Q. Now, are these internal documents or documents that you
19 gave to NIH?

20 A. These were internal documents.

21 Q. How did you fill out your time and attendance back then?

22 A. Um, it was basically a split with between the Marburg --

23 Q. I'm sorry, just the process. Did you fill out, do it on
24 a computer or did you have to fill them out by hand, what --

25 A. Oh, sorry. We did it on a computer.

1 Q. Okay. And did you do that on a regular basis?

2 A. Yes.

3 Q. Do you remember how often?

4 A. Um, about once a month.

5 Q. And these are a collection of time sheets for what
6 periods of time? Starting with Government Exhibit 11.

7 A. Um, for 2007, 2008 and 2009.

8 Q. Respectively, 11, 12 and 13.

9 A. Yes.

10 Q. Okay. Thanks. And when you were filling these out, did
11 you fill them out to accurately reflect the time spent on the
12 projects listed?

13 A. Um, not necessarily.

14 Q. What do you mean by that?

15 A. I was asked -- well, I was told that, you know, we had
16 certain grants that were funding different personnel and that
17 I was to report approximately 60 percent of my effort on the
18 NIH Marburg Grant.

19 Q. All right.

20 MR. KLUMB: I think I forgot to introduce these.

21 At this time I would offer 11, 12 and 13 into
22 evidence.

23 MS. PARHAM: No objection.

24 (Thereupon, Government Exhibit Numbers 11-13 were
25 received in evidence.)

1 Q. Okay. Take a look, please, at page 2 of Government
2 Exhibit 11. Just do this as an example.

3 MR. KLUMB: If we could zoom in on that a bit.
4 Thank you.

5 Q. First of all, let's -- what month is this for?

6 A. This is for February of 2007.

7 Q. And the left-hand column lists a bunch of different
8 projects, correct?

9 A. That's correct.

10 Q. And you filled this out for the time period to reflect
11 what percentage on the NIH Grant?

12 A. 60 percent of my time on the NIH Marburg Grant.

13 Q. And did you, in fact, work 60 percent of your time on the
14 NIH Marburg Grant?

15 A. No.

16 Q. The next one is project 3, that's Dengue. How much
17 percentage of time did you log there?

18 A. I logged in 36.3 percent.

19 Q. And did you, in fact, work 36 percent of your time during
20 that time period on the Dengue project?

21 A. No.

22 Q. You indicated that you did about 80 percent of your work
23 for doing new grant applications. Did you do some lab work?

24 A. No, I didn't do any lab work.

25 Q. You worked on the progress reports, for example, for the

1 Marburg Grant, correct?

2 A. That's right.

3 Q. Okay. And who was it that instructed you to fill out
4 your time sheets to reflect this breakdown of 60 percent on
5 Marburg and roughly 36 percent on Dengue?

6 A. Dr. Danher Wang.

7 Q. Did she tell you why?

8 A. Um, basically that the grants were funding us at
9 different percentages, percent efforts, so we needed to fill
10 out the timesheet to reflect that.

11 Q. Did you hear whether she instructed other people to do
12 the same?

13 A. Yes, I've heard that she instructed other people to do
14 the same, um, with the percentage.

15 Q. I asked a bad question.

16 A. Oh, sorry.

17 Q. Did you personally hear her instruct any other people to
18 do the same?

19 A. Um, yes.

20 Q. Thank you. Do you remember who they were?

21 A. Um, I think Adam Penn Nicholson was one of them that I
22 remember her speaking with.

23 Q. Now, let me show you what's been marked for
24 identification as Government's Exhibit 5.

25 Q. Having shown it to counsel, I'll now show it to you. I

1 ask you whether you recognize that e-mail.

2 A. Yes, I recognize it.

3 Q. Who is it an e-mail from and to and what date?

4 A. It's an e-mail from myself to Kimberly Belk at NIH on
5 September 25th, 2007.

6 MR. KLUMB: At this time I would offer Exhibit 5.

7 MS. PARHAM: No objection.

8 (Thereupon, Government Exhibit Number 5 was received
9 in evidence.)

10 Q. Okay. Now, I know this is years old, but you've had a
11 chance to review it more recently, correct?

12 A. That's correct.

13 Q. What are you bringing to Ms. Belk's attention here?

14 A. We are requesting to change how we are spending our
15 equipment money. Initially in the grant proposal we had
16 requested money to pay for the wave bioreactor and the FPLC
17 machine. And in this e-mail we are providing justification
18 to purchase a different set of equipment, a smaller wave
19 bioreactor, which would cost less money, and to -- and in
20 place of the savings from buying the smaller wave bioreactor,
21 we would purchase the AKTAcrossflow machine.

22 Q. And then read the last paragraph of, if you would, at
23 page 2, right above where you thank her for her time.

24 A. "Additionally, we realize that the project period for
25 year 1 of this award is ending soon. Would it also be

1 possible to extend the deadline for purchasing this equipment
2 by an additional six months so that we have sufficient time
3 to make certain that all equipment specifications are exactly
4 what are needed before we make the final purchase?"

5 Q. Why did you need to ask permission from her to do this?

6 A. Generally when you -- for NIH grants you have to use up
7 your equipment money during the first year of the project,
8 and so here we are asking for an extension to give us a
9 little bit more time to spend that money.

10 Q. Why couldn't you just draw the money down and spend it in
11 six months without asking for permission?

12 A. That's just the process that they require at NIH, is you
13 drawdown the money as soon as you need it.

14 Q. To spend it?

15 A. To spend, yeah.

16 Q. And do you recall whether or not your request was granted
17 and you were allowed to purchase it in the second year of the
18 grant?

19 A. I believe we were. That was -- the grant -- or I'm
20 sorry -- they did allow us to do that.

21 Q. To your knowledge was a small wave bioreactor ever
22 purchased by GenPhar after you got this permission?

23 A. To my knowledge, no, the wave bioreactor was not
24 purchased.

25 Q. And at least at the time that you left, which was what

1 again?

2 A. In December of 2009.

3 Q. Thank you. Now I would like to show you what's been
4 marked for identification as -- well, strike that. I'm going
5 to hold on to that.

6 MR. KLUMB: The Court's indulgence.

7 Q. Okay. During the period of time that you were working at
8 GenPhar, was GenPhar constructing any office buildings?

9 A. They were constructing a pretty sizeable manufacturing
10 facility.

11 Q. Have you seen it?

12 A. Yes, I've seen the building.

13 Q. Did you have much involvement in that project while you
14 were working at GenPhar?

15 A. No.

16 Q. Do you know anybody who did?

17 A. Dr. Dong.

18 Q. Did you have an understanding back then whether it was
19 permissible to use grant funds to pay for construction costs
20 in a new building?

21 A. Um, yeah. We were not supposed to be using grant funds
22 for that.

23 Q. Where did you come by that understanding?

24 A. Um, I think it was just general knowledge. Also, you
25 know, our grant budgets budgeted for specific things and that

1 was never listed.

2 Q. Did you ever discuss that subject with anyone at GenPhar?

3 A. Um, yes.

4 Q. Do you remember who?

5 A. Um, Dr. Dong did discuss it with me once.

6 Q. And can you tell us about that conversation, what he
7 said, what you said and how it came up?

8 A. Um, well, the -- the company had been visited by the FBI
9 regarding this, the subject of this case. And so after that,
10 I had a conversation with Dr. Dong where he approached me and
11 was basically, you know, trying to say, you know, Aren't we
12 supposed -- Aren't we able to use indirect costs for -- for
13 buildings and renovations and things like that? And I just
14 didn't really say anything. I didn't agree with him.

15 Q. Did you disagree?

16 A. I didn't say anything either way.

17 Q. Was that the only time that you had a discussion with him
18 about the building, to pay for it with grant funds?

19 A. Yes.

20 Q. Do you recall a conversation with Dr. Dong and a Debbie
21 Owens?

22 A. Yes.

23 Q. Did it involve the construction of the building and
24 funding it?

25 A. Yes. Um, they were having an argument about what could

1 be used to pay for the building. And at that point Dr. Dong
2 said to the effect of basically, you know, Of course we can't
3 use grant funds to pay for the building.

4 Q. Thank you. During the period of time that you worked at
5 GenPhar, did you partake in anything that you would consider
6 to be lobbying activities?

7 A. Um, yes.

8 Q. Tell us about that.

9 A. One time I did go up to DC, and we visited -- had some
10 dinner with some lobbying folks or people that were -- they
11 were involved in lobbying.

12 Q. What else did you do on that trip?

13 A. I don't recall.

14 Q. Okay. Nothing comes to mind?

15 A. No.

16 Q. Okay. Tell me whether it was your understanding that,
17 during this period of time, whether or not grant funds could
18 be used for lobbying activities?

19 A. Um, it was my understanding that you could not use grant
20 funds for lobbying.

21 Q. And how did you come by that understanding?

22 A. I believe it stated in our -- the notice of grant award
23 that we receive when we are awarded a grant.

24 Q. Now, during the period of time that you worked at
25 GenPhar, did you have an understanding about whether or not

1 you -- GenPhar could make a profit off the grants?

2 A. Um, I think for a specific kind of grant, a small
3 business grant, you are allowed to put in a fee, but other
4 than that, no, you are not allowed to make a profit.

5 Q. And tell us, what does the phrase IND mean?

6 A. That's Investigational New Drug.

7 Q. And what does that entail?

8 A. Um, whenever you have a new drug that you are trying to
9 get into the market, the first step is to get into a phase 1
10 clinical trial. And in order to get into that phase 1 trial,
11 you have to submit an Investigational New Drug application to
12 the FDA.

13 MR. KLUMB: Thank you, Your Honor. That's all I
14 have at this time.

15 THE COURT: Any cross-examination? I'm about ready
16 to break. I don't know how long you've got, but if you've
17 got more than just a few minutes, we are going to recess for
18 the evening.

19 MS. PARHAM: We would recess then.

20 THE COURT: Okay. Ladies and gentlemen, it's just
21 about 5:30 and it's about to get dark outside, so we are
22 going to recess now until 10:00 in the morning. If you would
23 come back at 10. As you know, there is coffee and
24 refreshments back there you can enjoy. We'll try to start
25 promptly at 10:00.

1 During this recess -- I don't know whether you are
2 going home or you are spending the night here in Charleston
3 or what, but undoubtedly, you will be confronted by somebody
4 who asks you what you have been doing. And at home they know
5 what you have been doing, so they know about the case, and
6 the temptation is going to be to discuss it with them. But
7 don't discuss the case with anybody or permit anybody to
8 discuss it with you. You are sworn to try this case based on
9 what you hear here in the courtroom. And if you go out on
10 the street, or wherever you go, and start talking about this
11 case, you are inevitably going to get input from somebody
12 else and that could influence your thinking. So let's don't
13 discuss it with anybody or permit anybody to discuss it with
14 you.

15 If you see something in the newspaper about it -- I
16 don't know who wrote it, nobody out there looks like they
17 might be writing for the paper -- that doesn't mean we are
18 not going to see a spread tomorrow in the paper covering this
19 thing. And if you do see that, just put it aside and look at
20 it after the case is over. Don't read it, don't partake in
21 any outside information during this recess. Have a great
22 time. Forget about the case until 10:00 in the morning and
23 we'll see you back then.

24 Thank you.

25 (Thereupon, the jury retired from the courtroom.)

1 THE COURT: Okay. I believe you had something you
2 wanted to take up before we recessed?

3 MR. KLUMB: In part because it will narrow the
4 scope of the trial.

5 If the Court please, I think that the scope of the
6 Indictment, the conspiracy count, would cover basically all
7 fraudulent conduct in connection with grant applications in
8 general covering that timeframe. It's a conspiracy to
9 provide false statements to the Government, to steal
10 government money, to commit wire fraud, to impair and impede
11 the lawful functions of the Government administering grants,
12 etcetera, and that anything -- for any type of grant to any
13 agency during that timeframe would be fair game.

14 THE COURT: Anything from the defense?

15 MS. PARHAM: Yes, sir.

16 THE COURT: This is in response to his question of
17 the witness about other applications that are not involved in
18 this case, and he said he wanted to offer it under 404(b).
19 And since he now admits that he didn't do what the Rule
20 requires thereunder, he's kind of, I don't want to say
21 reverse field, but he's kind of juked somebody and gone the
22 other way a little bit.

23 MR. KLUMB: I confess.

24 THE COURT: I've done it a hundred times. That's
25 what good lawyers do. Go ahead.

1 MS. PARHAM: Yes, sir. Those other grants, not the
2 one he mentioned, but the Navy Dengue Grant and the Army
3 Marburg Grant, are two earlier grants. That's not the one he
4 asked her about. He asked her about the Avian Flu Grant.
5 Those two are mentioned in the introduction in Count 1.
6 Those grants are not mentioned in the conspiracy count where
7 it lays out the conspiracy, which dates between August 2004
8 and April of 2011. It -- and those grants were not included
9 in the overt acts of the conspiracy.

10 So our reading of the Indictment is that they
11 charged fraud with regard to the NIH Marburg Grant. And so I
12 noticed in their exhibits, when I was going through them
13 again, that they are trying to put in all these other grants;
14 some of which are not even mentioned in the introduction
15 paragraph of the Indictment. And I just -- I think what they
16 are -- I don't know why they are trying to get it in. There
17 might be pieces of paper in there. I think, A, it's
18 confusing. B, it is 404(b) because there could be
19 something -- one of those that duplicates. And I just have
20 no idea what they are trying to do. But I don't think it's
21 appropriate or admissible.

22 THE COURT: Anything from the Government?

23 MR. KLUMB: Nothing further, Your Honor.

24 THE COURT: I don't know if it's proper 404(b)
25 material or not. Years ago when 404(b) was first born, we

1 looked at it one way as being a doctrine that was going to
2 limit the admissibility of character evidence. And lo and
3 behold, it's developed as an inclusive rule. And the Fourth
4 Circuit has time and time again said that we ought to
5 consider it as something that would permit evidence to come
6 in and only rule it out under certain circumstances. I still
7 don't agree with that approach, but it is a broad approach.
8 But even thereunder, I'm not sure whether I would let it in
9 or not, but I'm saved by the fact the Government didn't give
10 the notice required by 404(b).

11 As far as coming in because it's part of the
12 conspiracy, I don't quite understand that. It is -- if we go
13 to trial on this, is this -- is the defendant in jeopardy as
14 far as these grants are concerned?

15 Say what now? You were shaking your head. I just
16 don't understand. I don't think it's prejudicial to the
17 defendant. Obviously you wanted to get it in one way and
18 can't, so you are trying to claim it comes in another way.
19 There is no notice whatsoever that I can see where the
20 defendant would know about those grants as being evidence;
21 that they could defend against them; that they could possibly
22 get witnesses here who could testify as to the circumstances
23 existing in those grants. And they don't add anything to the
24 case.

25 If you can't convict this defendant on the grants

1 that you have chosen to pursue, then you ought not convict
2 him. It's that simple. And just to run another red herring
3 through the courtroom and hope that some juror will hook on
4 to that and decide the case thereon when it's irrelevant, I
5 don't think is appropriate. So I might change my mind
6 somewhere down the road as I learn more about the case, but
7 right now I don't think it's admissible and I sustain the
8 objection.

9 And the Indictment itself, I have never seen a more
10 confusing Indictment. It's really hard for me to tell what
11 the Government is pursuing, but I'm looking at it and maybe
12 in a few days I'll get enough knowledge to where I can start
13 asking some questions about it. But it is quite confusing.

14 But anyway, anything before we recess?

15 MR. KLUMB: Not from the Government, Your Honor.

16 THE COURT: All right. We'll be in recess until
17 10:00.

18 (Thereupon, the Court was in recess.)

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21 I certify that the foregoing is a correct transcript from the
22 record of proceedings in the above-titled matter.
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Amy C. Diaz, RPR, CRR

November 24, 2014

S/ Amy Diaz